STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Court of Appeals
[Fitzgerald, P.J. and Holbrook and McDonald, J.J.]

CITY OF DETROIT,
Plaintiff-Appellee,
and

JENNIFER M. GRANHOLM, *ex rel*
MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY and
MICHIGAN DEPARTMENT OF
NATURAL RESOURCES,
Intervening Plaintiffs-Appellants,
v

PETER ADAMO, ANDIAMO, INC., and
5900 ASSOCIATES, L.L.C.,
Defendants-Appellees.
_____/

Supreme Court No. 119142

Court of Appeals No. 211553

Wayne County Circuit Court No. 96-638479-CE

INTERVENING PLAINTIFFS-APPELLANTS' BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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QUESTIONS PRESENTED FOR REVIEW

I. **Whether the expressly retroactive amendment to § 131e of the General Property Tax Act, MCL 211.131e, made by 1999 PA 123 applies to all cases pending on appeal, including this appeal.**

II. **Whether, even without regard to the recent amendments to § 131e of the General Property Tax Act in 1999 PA 123, the circuit court and Court of Appeals erred in holding that persons who have received and for years ignored redemption notices and failed to timely redeem delinquent taxes on properties bid into the State can extend the final statutory redemption period because the State failed to simultaneously notify other unrelated parties.**

STATEMENT OF BASIS OF JURISDICTION

Intervening Plaintiffs-Appellants, Jennifer M. Granholm, Attorney General of the State of Michigan, *ex rel* Michigan Department of Environmental Quality and Michigan Department of Natural Resources, timely sought leave to appeal pursuant to MCR 7.302 from the February 9, 2001 unpublished *per curiam* Opinion of the Court of Appeals and the April 11, 2001 Order of the Court of Appeals denying the State's Motion for Rehearing. By Order dated December 18, 2001, this Court granted leave to appeal from the February 9, 2001 decision of the Court of Appeals. This Court has jurisdiction under 7.301(A)(2).

The State's appeal is directly related to the City of Detroit's parallel appeal from the decision of the Court of Appeals in *City of Detroit v Adamo*, 234 Mich App 235; 595 NW2d 646 (1999), *lv granted* ___ Mich ___ (No. 114794, Order dated December 18, 2001).

STATEMENT OF PROCEEDINGS AND FACTS

A. Nature of Action

This case involves the interpretation of § 131e of the General Property Tax Act ("GPTA"), 1893 PA 206, as amended, MCL 211.131e. That provision requires a Michigan Department of Treasury ("MDOT") notice of hearing be given to each owner of an interest in a property to start the owner's third and last opportunity to redeem property that has been deeded to the State of Michigan for a failure to pay taxes.

The circuit court interpreted § 131e to allow a person to retain a redeemable interest in property that is transferable, even if the person ignored a § 131e notice for a hearing and failed to redeem within the 30-day period following the hearing, as long as one or more other persons with a redeemable interest in the same property did not simultaneously receive § 131e notice for the same hearing and a simultaneous opportunity to redeem. (App 59a-64a).

Consequently, the circuit court held that 5900 Associates, L.L.C. can obtain a City of Detroit property known as the "World Trade Center Site,"[1] located at 5900 Livernois, which it values at in excess of $1 million, by paying back taxes, interest, and penalties totaling less than half that amount. It may do so through a quitclaim deed dated September 25, 1996 from Ultimate Corporation. This is even though, almost one year earlier, Ultimate Corporation had been afforded a § 131e notice, failed to appear at an October 30, 1995 hearing, and failed to redeem the outstanding taxes within 30 days thereafter. (App 52a, 64a-65a).

Likewise, the circuit court held that Andiamo, Inc. can obtain a City of Detroit property located at 6501 Harper Avenue, known as the "Chrysler Site," which it also values at in excess of

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[1] As noted by the Court of Appeals (Opinion at 2, 83a), the State's appeal with respect to the World Trade Center Site was dismissed by Order dated June 12, 2001. However, that site is still a subject of the City of Detroit's pending appeal from the decision in *City of Detroit v Adamo*,

$1 million by paying back taxes, interest, and penalties totaling less than one-quarter that amount. This is after the State, believing it held title no longer subject to any redemption right, cleaned up the illegally dumped solid waste off the property and made it otherwise suitable for redevelopment at a cost in excess of $1.3 million. (App 81a). Andiamo, Inc. may enjoy this windfall because, according to the circuit court, it obtained a quitclaim deed dated May 22, 1995, recorded July 3, 1996, from Philip Stramaglia. This is even though, more than one year earlier, Mr. Stramaglia had been afforded a § 131e notice, failed to appear at an April 4, 1994 hearing, and failed to redeem the outstanding taxes within 30 days thereafter. (App 53a-54a, 65a-66a).

B. Circuit Court Proceedings

The City of Detroit ("City") initially filed its Petition for Temporary Restraining Order and for Order to Show Cause naming Peter Adamo and Andiamo, Inc. as Defendants in Wayne County Circuit Court in August 1996. (App la). The City sought an injunction from the circuit court against Defendants demolishing the buildings or otherwise exacerbating the contaminated conditions on two properties tax reverted to the State but expected to be the sites of redevelopment in the future. (App 50a).

On August 27, 1996, the circuit court entered a Temporary Restraining Order and Order to Show Cause setting a hearing date of September 6, 1996. The City also filed its Complaint for Emergency Relief, Injunction and Declaratory Judgment that day. (App la).

By Stipulated Order dated September 6, 1996, the Temporary Restraining Order was continued and the show cause hearing was adjourned to September 27, 1997 and then was rescheduled to continue on October 23, 1996.

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234 Mich App 235; 595 NW2d 646 (1999), *lv granted* ___ Mich ___ (No. 114794, Order dated December 18, 2001) (hereinafter "*Adamo I*").

As a defense to the City's requests, Defendants claimed and continue to claim a right to use the two properties by way of a right to redeem acquired from previous owners of the two properties. (App 51a).

On September 30, 1996, the Attorney General, on behalf of the Michigan Department of Natural Resources ("MDNR") and the Michigan Department of Environmental Quality ("MDEQ") (collectively "State") filed a Motion to Intervene avowing ownership by the State of Michigan as to both properties and contesting any right of Defendants to redeem or otherwise use or assert any ownership interest in these properties. The MDNR administers tax-reverted properties for the State. The MDEQ pursues environmental cleanup and redevelopment activities at these sites. (App 2a, 50a-51a).

At the October 23, 1996 hearing, the circuit court granted the Attorney General, MDNR, and MDEQ status as Intervening Plaintiffs and heard arguments of the City and State contesting Defendants' claim to redemption rights in the property, offered an opportunity for additional briefing, and rescheduled the preliminary injunction hearing to November 22, 1996. (App 2a).

On November 22, 1996, the circuit court heard additional argument which led it to request that the State file a motion for summary disposition on the issue of whether Defendants have any right of redemption in these properties on which the circuit court would rule preliminary to the circuit court ruling on the City's request for injunctive relief. (App 2a).

Pursuant to the circuit court's directive, the State filed its original Motion for Summary Disposition as to Defendants' Lack of Redeemable Interest in the Properties on December 13, 1996 setting the matter for hearing on January 24, 1997. The City joined the State in its motion and Defendants filed responses. (App 3a).

By stipulation of counsel for the parties, the hearing on this motion was rescheduled a number of times for various reasons, then finally rescheduled to Friday, April 18, 1997.

However, on Thursday, April 17, 1997, counsel for Defendants Peter Adamo and Andiamo, Inc. removed the action to the United States Bankruptcy Court for the Eastern District of Michigan and asserted an automatic stay based on a Chapter 11 Petition for Reorganization that counsel had also filed that date on behalf of Defendant 5900 Associates, claiming a redemption interest in the World Trade Center property here in issue as its sole asset. (App 4a).

Accordingly, at the April 18, 1997 hearing, the circuit court declined to proceed pending further developments in the bankruptcy court proceedings but committed to deciding the case should the bankruptcy court reject removal and committed to considering granting the City and State sanctions against Defendants in the event that the petition was found by the bankruptcy court to have been filed in bad faith.

The City and State immediately moved in bankruptcy court to dismiss the Chapter 11 Petition of 5900 Associates as filed in bad faith, as well as to remand this action to the circuit court, which motions were granted in an Order Remanding Adversary Proceeding and an Order Dismissing Case dated June 25, 1997.

On August 14, 1997, in the circuit court, the City filed a Motion for Joinder of 5900 Associates, L.L.C., as well as a Motion for Sanctions, in both of which the State filed a concurrence. (App 4a).

By stipulation of the parties, 5900 Associates was joined as a party Defendant in this action and the Motion for Sanctions, as well as the State's Renewed Motion for Summary Disposition, were heard Friday, October 24, 1997, at which time the circuit court took the matter under advisement.

On March 5, 1998, the circuit court issued its Opinion and Order denying the State's Motion for Summary Disposition finding as a matter of law that the State holds title subject to

Defendants' continuing rights to redeem the World Trade Center and Chrysler/Harper properties. (App 50a-67a).

On March 24, 1998, the circuit court issued its Opinion and Order granting Defendants' Motion for Summary Disposition finding as a matter of law that 5900 Associates has an ownership interest in and retains a right to redeem the World Trade Center property and Andiamo, Inc. has an ownership interest in and retains a right to redeem the Chrysler/Harper property. (App 68a-72a).

On April 16, 1998, the circuit court entered its Final Judgment in this matter deeming its March 5 and 24, 1998 Opinions and Orders to be its final judgment as to Count I and dismissing the remaining Counts II, II, IV, and V with prejudice. (App 73a-74a).

C. Appellate Proceedings

On May 7, 1998, Plaintiff City of Detroit and the State each timely filed a Claim of Appeal by Right in the Court of Appeals pursuant to MCR 7.204(A)(1). The two cases were initially consolidated by the Court of Appeals. (App 8a). However, the Court subsequently vacated the order of consolidation. (App 10a).

1. City of Detroit's Appeal

The City of Detroit's appeal, Court of Appeals Docket No. 211552, proceeded separately through briefing and oral argument to decision on February 23, 1999 in *City of Detroit v Adamo*, 234 Mich App 235; 593 NW2d 646 (1999), *lv granted* ___ Mich ___ (No. 114794, Order dated December 18, 2001) (hereinafter "*Adamo I*"). The *Adamo I* panel affirmed the judgment of the circuit court with respect to both the World Trade Center Site and the Chrysler Site. The Court correctly noted that the issue presented, whether a person who receives and ignores the third and final redemption notice under § 131e of the GPTA where property is bid off to the State

nonetheless retains a right to redeem because the State failed to simultaneously provide notice of hearing to other unrelated interest holders, was one of first impression. *Id* at 240.

Like the circuit court, the *Adamo I* panel relied upon *White v Shaw*, 150 Mich 270; 114 NW 210 (1907), in which this Court interpreted different provisions of the GPTA, §§ 140-142, governing redemption rights where a private tax-sale purchaser, rather than the State, is awarded title. In *White*, this Court held that under § 140 a private tax-sale purchaser "cannot proceed by 'piecemeal' to cut off the right of redemption of each part owner." *Id* at 273. The *Adamo I* panel held that *White* was controlling, notwithstanding the textual and procedural differences between § 131 and § 140, and its conclusion that the so-called "rule of *White*" had already been legislatively and judicially repudiated in § 73a of the GPTA, MCL 211.73a, and *Halabu v Behnke*, 213 Mich App 598; 541 NW2d 285 (1995). *Id* at 241-243.

The City of Detroit timely filed an Application for Leave to Appeal from the *Adamo I* decision in this Court. *City of Detroit v Adamo*, Supreme Court Docket No. 114794. As noted above, this Court granted leave to appeal in that case on December 18, 2001.

2. Amendment of § 131e in 1999 PA 123

In 1999 PA 123, enacted July 23, 1999, the Legislature substantially repealed and revised various provisions of the GPTA concerning the property tax delinquency and reversion system. *See* House Legislative Analysis HB 4449, July 23, 1999. The 1999 amendments made large structural reforms intended to streamline the tax-reversion process and facilitate urban redevelopment. *Id* at 1-2, 18-19. Those amendments with one exception noted below, were given prospective effect. *Id* at 12.

However, in direct response to the circuit court decision in this case, and the then recent *Adamo I* decision, 1999 PA 123 also clarified that contrary to the reasoning of those courts, §

131e does not require simultaneous hearing for all owners and that the owner of a recorded property interest who, like Stramaglia, Andiamo's predecessor-in-title, is properly served with notice of hearing under § 131e and fails to timely redeem the property is prohibited from relying upon insufficient or inadequate notice to other persons. *Id* at 12.

Specifically, 1999 PA 123 amended § 131e(2) and (5) to read as follows:

> (2) For all property the title to which vested in this state under this section after October 25, 1976, *1 hearing shall be held to allow each owner* of recorded property interest *the opportunity to show cause* why the tax sale and the deed to the state should be canceled for any reason specified in section 98. The hearing shall be held after the expiration of the redemption periods provided in section 131 c. *The department of treasury may hold combined or separate show cause hearings for different owners of a recorded property interest.*
>
> * * *
>
> (5) For all property the title to which vested in this state under this section after October 25, 1976, the owner of a recorded property interest who has been properly served with a notice of the hearing under this section and who fails to redeem the property as provided under this section shall not assert any of the following:
>
> (a) That notice was insufficient or inadequate on the grounds that some other owner of a property interest was not also served.
>
> (b) That the redemption period provided under this section was extended in any way on grounds that some other owner of a property interest was also not served. [MCL 211.131e (2), (5) emphasis added]

Moreover, the enacting § 1 of 1999 PA 123 expressly made the amendments to § 131e retroactive:

> Enacting section 1. Section 131e of the general property tax act, 1893 PA 206, MCL 211.131e, as amended by this amendatory act, is retroactive and is effective for all property the title to which vested in this state under section 131e of the general property tax act, 1893 PA 206, MCL 211.131e, after October 25, 1976.

Following the enactment of 1999 PA 123, the City of Detroit filed a Motion for Peremptory Reversal and/or Remand in Docket No. 114794 in this Court. The City argued that

the retroactive amendment to § 131e is directly controlling and mandates reversal of the circuit court and *Adamo I* decisions.

3. Court of Appeals' Disposition of the State's Appeal

The State filed its Brief on Appeal in the Court of Appeals in January, 1999. Like the City in *Adamo I*, the State argued that the circuit court erroneously applied the interpretation of § 140 of the GPTA in *White v Shaw, supra*, to interpret § 131e.

On October 11, 1999, after the enactment of 1999 PA 123, the State filed a Statement of Supplemental Authority informing the Court of the recent, retroactive amendment to § 131e. The State argued that the amended statute controlled the pending appeal and mandated reversal. (App 13a). Defendant Andiamo, Inc. filed a Response to the State's Supplemental Authority in which it asserted that application of the 1999 amendment to § 131e would violate the separation of powers doctrine of the Michigan Constitution, and Andiamo's "due process" rights under the federal and state Constitutions. (App 14a).

In its February 9, 2001 Opinion in the instant case (*Adamo II*), another panel of the Court of Appeals affirmed the circuit court judgment in favor of Andiamo, Inc. (App 82a-85a). The Court determined that it was bound by the holding of *Adamo I* on "the exact same issue" (App 83a), pursuant to then MCR 7.215(H)(1), notwithstanding the subsequent amendment to § 131e in 1999 PA 123 that the *Adamo I* panel did not and could not consider.

The *Adamo II* panel expressly acknowledged that the 1999 amendments to § 131e, if applied, would require a different outcome:

> If this had been the way the statute read when this issue was first raised in the trial court, *we would hold that Andiamo, Inc., had no right to redeem the Chrysler Site* because Stramaglia's right of redemption was extinguished when he failed to redeem the property within thirty days following the April 12, 1994, show cause hearing. However, this was not the way § 131e read when judgment

> was entered or when the *Adamo I* Court interpreted the statute, guided by the rule of *White*. [A 83a (emphasis added).]

However, the Court of Appeals refused to apply the amendment to the pending appeal, *citing Quinton v General Motors Corp*, 453 Mich 63; 551 NW2d 677 (1996), and *Plaut v Spendthrift Farm, Inc*, 514 US 211; 115 S Ct 1447; 131 L Ed 2d 328 (1995), for the proposition that the constitutional doctrine of separation of powers "preclude[s] the Legislature from reversing or setting aside a judgment entered by a court" and applying that reasoning to the circuit court judgment then on appeal before it and the *Adamo I* Court of Appeals judgment then pending on appeal before this Court:

> [I]f the 1999 amendment to § 131e were to apply in the case at hand, it would require that the courts reopen or set aside the prior judgment. Such a result is precluded by the doctrine of separation of powers. [*Id* (citations and footnotes omitted).]

The State then timely filed a Motion for Rehearing in the Court of Appeals. (App 16a). In that motion, the State argued that the *Adamo II* panel had manifestly erred by failing to recognize that under both *Quinton* and *Plaut, supra*: (a) the separation of powers doctrine prohibits legislative reopening of a *final* judgment in a particular case, i.e., a judgment after the completion of all appeals or the expiration of the time for appeal; and (b) "[w]hen a new law makes clear that it is retroactive, an appellate court must apply that law in reviewing judgments still on appeal that were rendered before the law was enacted, and must alter the outcome accordingly." *Plaut, supra*, 514 US at 226 (citations omitted).

Defendant Andiamo, Inc. did not respond to the State's motion. On April 11, 2001, the Court of Appeals denied the motion for rehearing without explanation. (App 86a).

D. Undisputed Facts Regarding the Property Tax-Reversion Process for the Chrysler Site

There is no dispute as to the following dates and events regarding the "Chrysler Site." Only the legal consequences of these facts are in dispute in connection with the questions of law at issue.

This property, located at 6501 Harper in the City of Detroit, is the site of a former Chrysler Corporation manufacturing plant. (App 53a). According to an affidavit recorded on June 9, 1989 by Michelle Najor, Chrysler sold the property to Philip Stramaglia, Carlo Galuppi, and Michelle Najor for $190,000 on April 29, 1985. (App 19a).

No city taxes were paid on this property since 1986, and county taxes stopped being paid in 1988. The tax liability on this property accumulated to $170,357.

In 1991, with county taxes assessed for 1988 still delinquent, the State Treasurer included this property in a Petition filed in the Wayne County Circuit Court to enforce payment pursuant to the pertinent provisions of the GPTA, 1893 PA 206, as amended; MCL 211.1 *et seq.* (App 25a).

The petition was heard and proof of the publication of the order of hearing and of the petition were made and filed. The Wayne County Circuit Court then rendered its judgment determining that the amount of taxes, interest, fees, and charges alleged to be delinquent was valid and the State of Michigan was entitled to payment thereof. (App 44a). The judgment provided, in effect, that unless the amount was paid, the property would be sold at the 1991 tax sale and that, unless redeemed from the sale prior to the first Tuesday of May in the year succeeding such sale, title would then become absolute in the State of Michigan. (App 25a-26a).

Pursuant to the judgment and § 67 of the GPTA, MCL 211.67, the State Treasurer offered the property for sale at the 1991 tax sale. For lack of any other bidders, the property was sold and bid to the State of Michigan. (App 26a).

During the period of redemption after the 1991 tax sale (May 6, 1991 to May 5, 1992), no one, including Philip Stramaglia, attempted to redeem the property. No redemption having occurred, on May 5, 1992 a deed in the name of the State of Michigan was recorded. (App 26a, 48a).

Pursuant to § 131e of the GPTA, the State Treasurer served on Philip Stramaglia, as well as on all other entities identified as having some interest in the property by the title company under contract to the MDOT, a notice of hearing offering an opportunity to redeem the property under § 131e at a hearing set for May 12, 1994. (App 26a-27a; 43a).

Philip Stramaglia and every other entity noticed failed to appear at the May 12, 1994 hearing and further failed to redeem the subject parcel within 30 days after the hearing. An Affidavit to that effect was taken and recorded by the MDOT in January 1996. (App 27a, 42a).

The quitclaim deed for this property from Philip Stramaglia to Andiamo, Inc. is dated May 22, 1995, almost a full year after Philip Stramaglia failed to appear at or redeem after the April 12, 1994 § 131e hearing. The quitclaim deed was not recorded until July 6, 1996. (App 45a).

After this lawsuit was filed in August, 1996, Defendants claimed that other "owners of interests" in the Chrysler Site entitled to but not sent proper § 131e notice were Michelle Najor, Caputo & Company, P.C., and the United States.

The State Treasurer served notices for a § 131e hearing for July 29, 1997 on Michelle Najor, Carlo Galuppi, Caputo & Company, and the United States, c/o IRS/Special Procedures Branch. (App 27a, 37a-41a).

Consistent with the practice and past interpretation and application of the laws and regulations which are the responsibility of the Local Property Services Division of the MDOT, the State Treasurer did not renotice anyone, including Philip Stramaglia who had previously been afforded notice and an opportunity for a hearing, and had failed to redeem. (App 28a).

Michelle Najor, Carlo Galuppi, Caputo & Company, and the United States failed to appear at the hearing and further failed to redeem the subject parcel within 30 days after July 29, 1997. (App 27a-28a).

Affidavits dated September 2 and 3, 1997 concerning service of the proof of the notice and failure to appear at the hearing and the failure of Michelle Najor, Carlo Galuppi, Caputo & Company, and the United States to appear and/or to redeem were filed by the MDOT in Wayne County. (App 30a-34a).

ARGUMENT

I. THE EXPRESSLY RETROACTIVE AMENDMENT TO § 131e OF THE GENERAL PROPERTY TAX ACT, MCL 211.131e, MADE BY 1999 PA 123 APPLIES TO THE PENDING APPEAL AND MAKES CLEAR THAT DEFENDANT ANDIAMO, INC. HAD NO REDEEMABLE INTEREST IN THE TAX-REVERTED PROPERTY AT ISSUE HERE.

A. Standard Of Review

Issues of statutory and constitutional interpretation are questions of law and are reviewed *de novo*. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 238; 615 NW2d 241 (2000), *Oakland County Bd of County Road Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590; 575 NW2d 751 (1998).

B. It Is Undisputed That If § 131e Of The General Property Tax Act, As Amended By 1999 PA 123, Is Applied In The Pending Appeal, The Judgments Of The Circuit Court And Court Of Appeals Must Be Reversed.

From its inception, the central issue in this case has been the interpretation of § 131e of the GPTA, MCL 211.131e. That section describes the notice and hearing requirements for the third and final redemption period where land has tax reverted to the State of Michigan. It is undisputed that Defendant Andiamo's predecessor-in-interest, Philip Stramaglia, received a notice from the State that a § 131e show cause hearing would be held on April 12, 1994 and that he failed to appear at the hearing and did not redeem the property in the 30-day period following the hearing as provided in MCL 211.131e(3). (App 26a-27a; 42a-43a). Approximately one year later, on May 22, 1995, Philip Stramaglia executed a quitclaim deed conveying his rights in the Chrysler Site to Defendant Andiamo, Inc. (App 45a).

In the circuit court, the State and the City argued that Stramaglia's statutory right to redeem his interest in the property had been extinguished pursuant to § 131e(3) 30 days after the April 12, 1994 hearing and that, consequently, he had no remaining interest in the property, including a right to redeem to pass to Andiamo.

The circuit court ruled against the Plaintiffs solely because the State did not give notice of the April 12, 1994 hearing to certain *other* persons or entities that also had a redeemable interest in this property and because the court interpreted § 131e as requiring *simultaneous* notice by the State to all persons or entities with such an interest. (App 59a-66a).

> [T]he trial court found that because the state did not give notice to all owners of the April 1994, hearing, Stramaglia's right to redeem was not extinguished when he received notice. Accordingly, the trial court held Stramaglia's right to redeem was passed to defendant Andiamo, Inc., by the quitclaim deed. [*Adamo I, supra* at 239.]

The Court of Appeals in *Adamo I* affirmed the circuit court judgment for the same reasons. Like the circuit court, the *Adamo I* panel held, as a matter of first impression, that this so-called "rule against piecemeal extinguishing of redemption rights" announced in *White v Shaw, supra*, in construing §§ 140-142 of the GPTA, also applied to § 131e. *Adamo I*, 234 Mich at 240-243.

In the instant case, *Adamo II*, the Court of Appeals stated that it was bound by the holding of *Adamo I* pursuant to then MCR 7.215(H)(1). (App 83a). However, despite the identity of the underlying trial court judgment in *Adamo I* and *Adamo II*, *Adamo I* could not properly be considered a binding precedent in the later case because of the intervening and directly controlling amendment to the statute construed in *Adamo I*. Simply put, the subsequent amendment of § 131e presents a separate legal issue that was not before the Court in *Adamo I*.

On July 22, 1999, the Legislature enacted 1999 PA 123. In apparent response to the decisions of the circuit court at issue here and of the Court of Appeals in *Adamo I*, the statute amended § 131e to clarify that contrary to the reasoning of those decisions, § 131e does not require a single, simultaneous hearing and redemption period for all interested parties and that parties given notice who fail to redeem do not have continuing rights of redemption until other parties are notified. As amended by 1999 PA 123, MCL 211.131e(2) and (5), now state:

> (2) For all property the title to which vested in this state under this section after October 25, 1976, *1 hearing shall be held to allow each owner* of recorded property interest *the opportunity to show cause* why the tax sale and the deed to the state should be canceled for any reason specified in section 98. The hearing shall be held after the expiration of the redemption periods provided in section 131 c. *The department of treasury may hold combined or separate show cause hearings for different owners of a recorded property interest.*
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> * * *
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> (5) For all property the title to which vested in this state under this section after October 25, 1976, the owner of a recorded property interest who has been properly served with a notice of the hearing under this section and who fails to

redeem the property as provided under this section shall not assert any of the following:

(a) That notice was insufficient or inadequate on the grounds that some other owner of a property interest was not also served.

(b) That the redemption period provided under this section was extended in any way on the grounds that some other owner of a property interest was not also served. [emphasis added]

Moreover, the Legislature made abundantly clear that the amendment to § 131e is intended to be retroactive. Enacting section 1 of 1999 PA 123 states:

Section 131e of the general property tax act, 1893 PA 206, MCL 211.131e, as amended by this amendatory act, is retroactive and is effective for all property the title to which vested in this state under section 131e of the general property tax act, 1893 PA 206, MCL 211.131e, after October 25, 1976.

As the Court of Appeals acknowledged in the instant case, it is obvious that if the amended statute is applied in this case, the judgments of the circuit court and Court of Appeals must be reversed. After quoting the current version of § 131e (5), the *Adamo II* panel stated:

If this had been the way the statute read when this issue was first raised in the trial court, we would hold that Andiamo, Inc., had no right to redeem the Chrysler Site because Stramaglia's right of redemption was extinguished when he failed to redeem the property within thirty days following the April 12, 1994, show cause hearing. However, this was not the way § 131e read when judgment was entered or when the *Adamo I* Court interpreted the statute, guided by the rule of *White*. [A 84a]

Ultimately, the *Adamo II* panel refused to apply the amended statute in the instant case because of its erroneous belief that to do so would violate the constitutional doctrine of separation of powers. As demonstrated in § I.D. below, that holding rests upon a fundamental misapplication of that constitutional doctrine.

C. The Legislature Clearly Intended The 1999 Amendment To § 131e To Apply Retroactively.

The first issue before this Court is whether the Legislature intended § 131e, as amended by 1999 PA 123, to apply retroactively. As stated in *Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001):

> In determining whether a statute should be applied retroactively or prospectively only, "[t]he primary and overriding rule is that legislative intent governs. All other rules of construction and operation are subservient to this principle." *Franks v White Pine Copper Division*, 422 Mich 636, 670; 375 NW2d 715 (1985).

Consequently, "the initial critical inquiry is whether the Legislature has stated its retrospective or prospective intention in clear and express language." *Franks*, 422 Mich at 670.

In 1999 PA 123, the Legislature clearly and expressly stated its intention to apply the amendment to § 131e retroactively. Enacting § 1 of 1999 PA 123 states:

> Section *131e* of the general property tax act, 1893 PA 206, MCL 211.131e, *as amended by this amendatory act, is retroactive* and is effective for all property the title to which vested in this state under section 131e of the general property tax act, 1893 PA 206, MCL 211.131e, after October 25, 1976. [Emphasis added.]

Where, as here, the statutory language concerning retroactivity is unambiguous, no construction or interpretation is warranted. *Franks, supra*. Absent some independent constitutional reason for not doing so, this Court must follow the plain language of 1999 PA 123 and retroactively apply the amendment to § 131e as the Legislature intended.

Moreover, the fact that the amendment to § 131e in 1999 PA 123 was enacted in response to the recent circuit court decision in this case and to *Adamo I* is further evidence that the Legislature intended that it be applied retroactively. The fact that a statute is amended soon after a controversy over its meaning arises can, in and of itself, serve as evidence that it was intended to apply retroactively. In *Detroit v Walker*, 445 Mich 682, 699; 520 NW2d 135 (1994),

defendant taxpayers successfully argued in the trial court and the Court of Appeals that the city did not have authority to collect delinquent taxes pursuant to the GPTA, MCL 211.47, but was limited to the collection method set forth in its charter. While the case was pending, and after a Court of Appeals' ruling against the city and in favor of delinquent taxpayers, the city amended its charter to correct the alleged defect. Despite the fact that there was no mention of an expression of retroactive intent in the amendment (the amendment is quoted at 445 Mich 69, n 19), the Court held that the amendment should have been given effect and noted:

> It is well settled by this Court that when an amendment is enacted soon after controversies arise regarding the meaning of the original act, "'it is logical to regard the amendment as a legislative interpretation of the original act. . . .'" *Detroit Edison Co v Revenue Dep't*, 320 Mich 506, 519-521; 31 NW2d 809 (1948), quoting 1 Sutherland, Statutory Construction (3d ed), § 1931, p 418. *See also People of Khoury*, 437 Mich 954; 467 NW2d 810 (1991); *Detroit Edison Co v Janosz*, 350 Mich 606, 613-614; 87 NW2d 126 (1957). In our case, the amendment of the Detroit City Charter clarifies what the drafters' and ratifiers' intent had been all along. [*Id.*]

This same principle was reiterated in *Adrian School District v Michigan Public School Employees Retirement System*, 458 Mich 326, 337; 582 NW2d 767 (1998).

Because "[t]he primary and overriding rule . . . [of] legislative intent. . .", *Lynch & Co*, 463 Mich at 583, dictates retroactive application of the statutory amendment in this case, there is no basis to consider or apply the three other so-called "rules of retrospectivity" discussed in *In re Certified Questions (Karl v Bryant Air Conditioning Co)*, 416 Mich 558, 570-571; 331 NW2d 456 (1982):

> First, is there specific language in the new act which states that it should be given retrospective or prospective application. See headnote No. 1, *Hansen-Snyder Co. v General Motors Corp.*, 371 Mich 480, 124 N.W.2d 286 (1963). Second, "[a] statute is not regarded as operating retrospectively [solely] because it relates [416 Mich 571] to an antecedent event". *Hughes v Judges' Retirement Board*, 407 Mich 75, 86, 282 N.W. 2d 160 (1979). Third, "[a] retrospective law is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability with respect to transactions or considerations already past". *Hughes, supra*, p. 85, 282 N.W. 2d

160; *Ballog v Knight Newspapers, Inc.*, 381 Mich. 527, 533-534, 164 N.W.2d 19 (1969). Fourth, a remedial or procedural act which does not destroy a vested right will be given effect where the injury or claim is antecedent to the enactment of the statute. *Rookledge v Garwood*, 340 Mich 444, 65 NW2d 785 (1954).

Contrary to the approach erroneously taken by the special panel of the Court of Appeals in *Doe v Dep't of Corrections (On Remand)*, ___ Mich App ___; ___ NW2d ___; 2001 Mich App Lexis 316 (2001), the other *Karl* "rules" are relevant only in determining *whether* the Legislature intended retroactive application in the absence of language clearly expressing that intent (i.e., the "first" rule), they are not a license for reviewing judges to substitute their own judgment as to whether retroactivity is "proper" for that of the Legislature.[2]

Finally, the fact that 1999 PA 123 has a substantive impact on an existing case does not mean that the Legislature's directive for retroactive effect should be ignored or overridden. "Even if the statute effects substantive changes in the law, it may be applied retrospectively if the legislature intends." 2 Sutherland, Statutory Construction (6th ed), § 41.4, p 410, citing *Toise v Comm'r of Social Services*, 243 Conn 623, 628; 707 A2d 25 (1998). Impairing or even eliminating a litigant's claim or defense is not impermissible *per se*. *Plaut v Spendthrift Farm,* 514 US 211, 227; 115 S Ct 1447; 131 L Ed 2d 238 (1995) makes very clear that the Legislature may retroactively change the law while a case is pending anywhere in the judicial system and that courts are obligated to apply the retroactive law to pending cases, *even when that has the effect of overturning the judgment of a court other than the Supreme Court in a case pending on appeal.*

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[2] Obviously, the judiciary retains the right and the duty to separately determine whether retroactive application of a statute violates a provision of the federal or state Constitutions, such as the Due Process Clause.

These are precisely the facts of the instant case, and § 131e, as amended by 1999 PA 123, must be applied even though that will effectively overrule *Adamo I* and bar Defendant's claimed redemption of "rights."

D. The Constitutional Separation Of Powers Requires, Rather Than Prohibits, The Application Of The Recent Amendment To § 131e In The Pending Appeal.

The Court of Appeals refused to apply the otherwise dispositive amendments to § 131e in the instant case, stating:

> As our Supreme Court observed in *Quinton v General Motors Corp*, 453 Mich 63, 75; 551 NW2d 677 (1996), the doctrine of separation of powers, which underlies our constitutional system of government, "preclude[s] the Legislature from reversing or setting aside a judgment entered by a court." (Footnotes omitted.) Accord *Plaut v Spendthrift Farm, Inc*, 514 US 211, 227; 115 S Ct 1447; 131 L Ed 2d 328 (1995) (observing that "Congress may not declare by retroactive legislation that the law applicable to that very case was something other than what the courts said it was"). If the 1999 amendment to § 131e were to apply in the case at hand, it would require that the courts reopen or set aside the prior judgment. *See Quinton, supra* at 82-84. Such a result is precluded by the doctrine of separation of powers. *Id.* [A 84a (footnotes omitted).]

The Court's "analysis" of this separation of powers issue is fundamentally flawed in at least three respects. First, the Court failed to recognize that the underlying constitutional principle, as explained in each of the cases it cited, is that the separation of powers embodied in Const 1963, art 3, § 2 and Const 1963, art 6, § 1 prohibits the Legislature from reopening or setting aside a *final* judgment entered by the judicial branch in a particular case, that is, a judgment rendered after the completion of all appeals or the expiration of time for appeal.

In *Romein v General Motors Corp*, 436 Mich 515, 536-539; 462 NW2d 555 (1990), *aff'd* 503 US 181; 112 S Ct 1105; 117 L Ed 2d 328 (1992), this Court held that retroactive amendments to the Workers Disability Compensation Act in 1987 PA 28 did not violate either Const 1963, art 3, § 2 or Const 1963, art 6, § 1 of the Michigan Constitution. The Court stated:

> The operative provisions of the statute do not encroach upon the sphere of the judiciary. Rather, they merely repeal the act that *Chambers* construed. That prior statute is superseded by 1987 PA 28 and the amendatory act expressly indicates that it is to be applied retroactively. This enactment is a valid exercise of the Legislature's authority to retroactively amend legislation perceived to have been misconstrued by the judiciary. Such retroactive amendments based on prior judicial decisions are constitutional if the statute comports with the requirements of the Contract and Due Process Clauses of the federal and state constitutions, and so long as the retroactive provisions of the statute do not impair *final judgments*. [*Romein, supra* at 537 (emphasis added).]

Similarly, in *Quinton v General Motors*, 453 Mich 63, 95; 551 NW2d 677 (1996), Justice Levin explained that "[t]he foundation of the doctrine of separation of powers is to protect the independence of the judiciary by insulating from legislative encroachment *final* judicial judgments. . . ." (Emphasis added). Significantly, *Quinton* also adopted as persuasive Justice Scalia's analysis of the separation of powers doctrine under the federal Constitution in *Plaut v Spendthrift Farm, supra*, and emphasized that in *Plaut* the Court invalidated a statute because it retroactively commanded the federal courts to "reopen" or "set aside" "final judgments" entered before its enactment. *See* 453 Mich at 76-79, 82-83, 86-89.

Second, the *Adamo II* panel erroneously treated the circuit court judgment and the Court of Appeals judgment in *Adamo I*, both of which remain on appeal, as if they were "final" judgments in the sense discussed in *Quinton* and *Plaut*. They manifestly are not.

Although those decisions represent "final" determinations of the circuit court and the Court of Appeals in the narrow sense that they concluded proceedings in those courts, and were then subject to further appellate review as provided in MCR 7.202(7), respectively, they are not "final" judgments of the judicial branch with respect to the separation of powers doctrine.

In Const 1963, art 6, § 1, the people have vested the judicial power of the State in one court of justice:

> The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial

> court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

Under this constitutional structure, the judicial branch's determination of the rights of the parties in a pending case is not, in a constitutional sense, "final" until the completion of any appeal to this Court, or the expiration of time for all available appellate review under the Michigan Court Rules.

Contrary to Defendant-Appellee Andiamo's argument in the Court of Appeals (Response to Appellant's Supplemental Authority, pp 3-5), this Court's decision in *Wylie v City Comm'n of Grand Rapids*, 293 Mich 571; 292 NW 668 (1940), in no way held that application of statutory amendments to cases pending on appeal violates the constitutional separation of powers. Indeed, Andiamo's citation of *Wylie* for that proposition (Response, p 4) is a blatant fabrication. In *Wylie*, this Court held that *its* previous decision concluding a prior, related appeal, *Smith v City Comm'n of Grand Rapids*, 281 Mich 235; 274 NW 776 (1937), was a "final judgment" determining the rights of certain plaintiffs in that case that was not and could not be "reversed" by later statutory amendment. *Wylie, supra* at 583-585. *Wylie* neither stated nor even implied that a retroactive statutory amendment may not be applied to cases finally decided by lower courts but still pending on direct appeal at the time of the amendment.

Third, and most remarkably, the Court of Appeals decision in *Adamo II* ignores the fact that both of the cases it cited as authority, *Quinton* and *Plaut*, specifically recognized that the separation of powers doctrine does not prohibit and, in fact, requires application of retroactive statutory change to cases pending on appeal. In *Quinton*, for example, this Court noted that in *Robertson v Seattle Audubon Society*, 503 US 429, 441; 112 S Ct 1407; 118 L Ed 2d 73 (1992), the Supreme Court "held that [legislation] that directly and intentionally affected the outcome of

two cases already decided *but pending on appeal* did not violate separation of powers principles." 453 Mich at 92, n 51 (emphasis in original).

Astonishingly, the *Adamo II* decision, while purporting to rely upon *Plaut, supra* (Opinion at 3; 84a), ignored the most relevant portion of that Opinion that immediately preceded the language it quoted:

> It is true, as petitioners contend, that Congress can always revise the judgments of Article III courts in one sense: *When a new law makes clear that it is retroactive, an appellate court must apply that law in reviewing judgments still on appeal that were rendered before the law was enacted, and must alter the outcome accordingly.* . . . It is the obligation of the last court in the hierarchy that rules on the case to give effect to Congress's latest enactment, even when that has the effect of overturning the judgment of an inferior court, since each court, at every level, must "decide according to existing laws." [514 US at 226-227 (citations omitted, emphasis added).]

While the *Adamo II* panel might have been initially misled by Defendant Andiamo's highly-selective quotations from *Plaut* in its Response to the State's Supplemental Authority, the language quoted above was presented to the Court in the State's Motion for Rehearing. Under these circumstances, the *Adamo II* panel's holding that application of 1999 PA 123 to the pending appeal violates the constitutional separation of powers is manifest error, and its summary denial of the State's Motion for Rehearing is simply inexplicable.

This Court has also recently recognized that a reviewing court must consider the retroactive effect of statutory amendments to cases pending on appeal at the time the amendment is enacted, consistent with *Plaut*. For example, in *Doe v Michigan Dep't of Corrections*, 463 Mich 981-982; 625 NW2d 750 (2001), this Court, in lieu of granting leave to appeal, remanded the case to the Court of Appeals "with the direction that the special panel which decided this case consider whether plaintiffs' claims are barred because recent amendments (1999 PA 201) to the Persons With Disabilities Civil Rights Act, MCL 37.1101 *et seq*; MSA 3.550(101) *et seq*, should

be applied retroactively to this case. *See Plaut v Spendthrift Farm, Inc*, 514 US 211; 115 S Ct 1447; 131 L Ed 2d 238 (1995)."

In sum, the constitutional separation of powers not only permits but actually *requires* a reviewing court to apply the law as amended by the Legislature to cases pending on appeal, absent some independent constitutional defect. As this Court stated in *Quinton*, 453 Mich at 96:

> A properly enacted statute is binding law except to the extent that it violates the United States Constitution or the Constitution of Michigan. As an equal branch of government, the judiciary is obliged to enforce the enactments of the Legislature to the extent permitted by the constitution.

Here, Defendant has not shown and cannot show that 1999 PA 123 is otherwise unconstitutional.

E. Defendant Andiamo, Inc.'s Assertion That Application Of § 131e, As Amended By 1999 PA 123, To The Instant Case Violates Its Due Process Rights Is Without Merit.

In the Response of Appellee, Andiamo, Inc., to Appellant's Supplemental Authority filed in the Court of Appeals (pp 5-10), Andiamo also claimed that application of the existing version of § 131e to the pending case violates its rights under the Due Process Clauses of the United States and Michigan Constitutions. Specifically, Andiamo asserted that it has "vested rights" to both the final judgment entered by the circuit court and to its purported redemption "rights" under § 131e as interpreted in *Adamo I*. (Page 5). The *Adamo II* panel did not even address the issue. In any event, these "vested rights" claims are baseless and, therefore, do not provide an alternative ground for affirming the judgments of the lower courts in this case.

1. A vested right is more than mere expectation – there must be title in the right.

In *Detroit v Walker*, 445 Mich at 689, this Court explained:

> The concern regarding retroactivity of statutes arises from constitutional due process principles that prevent retrospective laws from divesting rights to property or vested rights, or the impairment of contracts. [Citations omitted.]

See also, Karl v Bryant Air Conditioning, supra, 416 Mich at 579.

While the case was pending in *Detroit v Walker*, and after a Court of Appeals ruling against the city and in favor of delinquent taxpayers, the city amended its charter to correct an alleged defect and incorporate all of the state law mechanisms for tax collection, including a recent amendment to the GPTA that allowed cities to sue property owners directly for delinquent taxes without first seizing and selling the real property. The taxpayers asserted that the amendment to the GPTA should not be applied retroactively because they would be deprived of a vested right, i.e., not being personally liable for property taxes. The Court rejected the taxpayers' argument that they had a vested right and held:

> A vested right has been defined as an interest that the government is compelled to recognize and protect of which the holder could not be deprived without injustice. *Cusick v Feldpausch*, 259 Mich 349, 352; 242 NW 226 (1932), citing 2 Cooley Constitutional Limitations (8th ed), p 749). *Nonetheless, when determining whether a right is vested, policy considerations, rather than inflexible definitions must control, and we must consider whether the holder possesses what amounts to be a title interest in the right asserted.* We explained in *Minty v Bd of State Auditors*, 336 Mich 370, 390; 58 NW2d 106 (1953):
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> > "*It would seem that a right cannot be considered a vested right, unless it is something more than such a mere expectation as may be based upon an anticipated continuance of the present general laws*; it must have become a title, legal or equitable, to the present or future enjoyment of property, or to the present or future enforcement of a demand, or a legal exemption from a demand made by another." [445 Mich at 669 (emphasis added).]

Measured by these standards, it is clear that each of Andiamo's claims of "vested rights" is without merit.

2. Andiamo has no vested right in the lower court decisions applying the so-called "rule" of *White v Shaw*, 150 Mich 270 (1907), to Section 131e.

Defendant's first suggestion that it has a "vested right" to the circuit court judgment is absurd. That judgment has been and remains subject to further appellate review and reversal in this case and the City of Detroit's companion appeal pursuant to MCR 7.301 and 7.316.

Defendant's contention that it somehow has a "vested right" in the analysis applied to the pre-1999 PA 123 version of § 131e by the Court of Appeals in *Adamo I* is equally unavailing. The Legislature has the right to overrule the courts' interpretation of a statute or to change a statute retrospectively after the courts have interpreted it, subject only to the restriction that the Legislature cannot impair a final judgment as to the parties to the judgment. *Romein v General Motors Corp, supra* at 537-538; *Stanton v Battle Creek*, 237 Mich App 366, 373-374; 603 NW2d 285 (1999). As discussed above, the *Adamo I* judgment was not and is not "final."

In *Stanton*, the Court analyzed the Legislature's amendment to MCL 257.33, which had the effect of overruling this Court's decision in *Mull v Equitable Life Assurance Society*, 444 Mich 508; 510 NW2d 184 (1994). In addressing the same issue decided in *Mull*, in light of enactment of the legislative amendment, the Court of Appeals responded to plaintiff's argument that retroactive application of the amendment impaired his vested rights by stating:

> Clearly, the 1995 amendment of MCL 257.33; MSA 9.1833, was remedial in that it was intended to clarify the Legislature's intent with respect to the definition of a motor vehicle, in response to our Supreme Court's decision in *Mull, supra*. Because the amendment was intended to cure a judicial misinterpretation and did not impair final judgments, the retroactive application of the remedial amendment did not violate plaintiff's due process rights. [*Stanton*, 237 Mich App at 374.]

In the present case, it is clear that the 1999 amendment to § 131e was likewise intended to cure a judicial misinterpretation of the existing law. As demonstrated in § II, *infra*, both the circuit court and the Court of Appeals in *Adamo I* misapplied *White v Shaw* to § 131e.

The 1999 amendment to § 131e did not, as Defendant may suggest, alter well-settled substantive law. It is true, of course, that *White v Shaw* and subsequent cases had long interpreted §§ 140-142 of the GPTA to preclude so-called "piecemeal" termination of redemption rights by private tax sale purchasers. However, as the Court of Appeals itself acknowledged in *Adamo I*, "Whether the state may extinguish redemption rights 'piecemeal'

[under § 131e] when property is bid off to the state at tax sales pursuant to the GPTA *is an issue of first impression.*" 234 Mich App at 240 (emphasis added).

Indeed, prior to the circuit court decision in the present case, no Michigan court had ever held, as Defendant claims, that § 131e required *simultaneous* notices to and hearings for all holders of significant interests in a tax-reverted property in order to terminate the redemption rights of *any* interest holder. Consistent with § 131e, and this Court's decision in *Dow v State of Michigan*, 396 Mich 192; 240 NW2d 450 (1976), it was clear, of course, that a property owner who was not itself afforded notice and opportunity for hearing under § 131e (or that owner's grantee) retained a right to redeem under § 131e. *Brandon Twp v Tomkow*, 211 Mich App 275, 282-285; 535 NW2d 268 (1995); *Flint v Takacs*, 181 Mich App 732, 735-739; 449 NW2d 699 (1989). However, before this circuit court decision in the instant case, it had never been held that a property owner such as Philip Stramaglia who actually received but ignored the required notice and opportunity for hearing under § 131e, nevertheless retained a right to redeem based upon lack of simultaneous notice to *other* holders of ownership interests in the tax-reverted parcel.

As discussed in § II, *infra*, that holding was not dictated by the language of the relevant statute, § 131e. Instead, it was based upon the misapplication of a decision of this Court, *White v Shaw*, that, almost 70 years before § 131e was even enacted, interpreted entirely different provisions of the statute, §§ 140-142. Moreover, the lower courts failed to consider that the evident legislative purpose of § 131e was to meet the minimum standards of due process for individual property owners, consistent with *Dow v State of Michigan*. Finally, the lower court's decision ignored the fact that the MDOT, the agency charged with implementation of the GPTA, had, for more than 20 years (since the enactment of § 131e in 1976), consistently interpreted § 131e merely to require notice and opportunity for hearing, but not necessarily *simultaneous* notice and hearing to all owners of significant interests in tax-reverted properties bid to the state.

Under these circumstances, Andiamo manifestly cannot demonstrate a legitimate claim of entitlement to the analysis of § 131e adopted by the lower courts prior to 1999 PA 123. It has no "vested right" to an unprecedented and mistaken interpretation of a statute that has been vigorously disputed by the state and the City since the inception of this case and throughout the pending appeals.

3. Andiamo has no vested right in continuation of § 131e as it existed prior to 1999 PA 123.

As a general matter, statutory rights are not vested rights. In *Lahti v Fosterling*, 357 Mich 578, 588-589; 99 NW2d 490 (1959), the Court stated:

> The question of determining what is a vested right has always been a source of much difficulty to all courts. The right which defendants claim sprang from the kindness and grace of the legislature. It is the general rule that that which the legislature gives, it may take away. A statutory defense, or a statutory right, though a valuable right, is not a vested right, and the holder thereof may be deprived of it.
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> This Court in *Harsha v. City of Detroit*, 261 Mich 586, 594, 246 NW 849, 851, 90 ALR. 853 [(1933)], said:
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> > "'There can, in the nature of things, be no vested right in existing law which precludes its change or repeal."

See also, Wylie v City Comm'n of Grand Rapids, 293 Mich at 588-592.

Moreover, it has long been recognized that owners of property foreclosed upon for unpaid property tax liens do not have a vested right in particular statutory rights of redemption procedures. Thus, this Court, in addressing the retroactive application of 1937 PA 155, which reduced the redemption period for state-owned tax-reverted lands from five years to 18 months and divested former owners of their automatic rights to reacquire their property by matching the highest bid at public action, stated:

> The [tax-foreclosure judgment] in question was entered pursuant to the tax statutes in effect at the time, and for the purpose of carrying out the provisions of such law. Such decree cannot be said to vest rights in the tax delinquent debtor.

> The claimed rights arose only out of the provisions of the statute governing sales for tax delinquency; and *such rights are subject to abridgment by the legislature, for the reason that they are remedial in their nature.* One who owes delinquent taxes has no vested right to have the interest thereon remain unchanged, nor to have the time of sale or period of redemption continue the same as it existed during the period of delinquency. *Nor do vested rights arise out of redemption provisions of a decree entered pursuant to a remedial statute governing tax sales.* [*Baker v State Land Office Bd*, 294 Mich 587, 601; 293 NW 763 (1940) (citations omitted, emphasis added).]

See also, James A. Welch Co v State Land Office Bd, 295 Mich 85; 294 NW 377 (1940), and *City of Detroit v Walker, supra.*

In *Dow v State of Michigan, supra*, this Court held the Due Process Clauses of the United States and Michigan Constitutions require that an owner of a significant interest in property be given proper notice and an opportunity for a hearing to contest the state's claim that it may take the property for nonpayment of taxes and that newspaper publication is not constitutionally adequate notice. 396 Mich at 196. Under the then-existing GPTA, private tax sale purchasers [under § 140] but not the state, were required to give notice by registered mail to persons having interests in tax delinquent properties prior to foreclosure of tax liens. *Id* at 197. Ultimately, the Court held:

> ...it would satisfy constitutional requirements if the state were to adopt a procedure providing for (i) ordinary mail notice before sale to the person to whom tax bills have been sent and to "occupant," and (ii) after sale to the state, formal notice to all owners of significant property interests of the constitutionally required opportunity for hearing and redemption. [*Id* at 212, (footnote omitted)].

In response to this Court's decision in *Dow,* the Legislature enacted 1976 PA 292 adding additional notice provisions, including a new third and final notice and opportunity to redeem in § 131e. *See Smith v Cliffs on the Bay Condominium Association*, 463 Mich 420, 428-429, 617

NW2d 536 (2000). At the time of the MDOT's notice to Philip Stramaglia in 1994, [3] § 131e provided, in relevant part:

> (1) The redemption period on property deeded to the state under section 67a shall be extended until the owners of a significant property interest in the property have been *notified of a hearing* before the department of treasury. Proof of the notice of the hearing shall be recorded with the register of deeds in the county in which the property is located.
>
> (2) The hearing shall be held to allow the owners to show cause why the tax sale and the deed to the state should be canceled for any reason specified in section 98. The hearing shall be held after the expiration of the redemption periods provided in section 131c.
>
> (3) After expiration of the redemption periods provided in section 131c, on the first Tuesday in November after title to the property vests in this state, *property may be redeemed up to 30 days following the date of hearing provided by this section* by payment of the amounts set forth in subsection (4) and in section 131c(1), plus an additional penalty of 50% of the tax on which foreclosure was made. The additional penalty shall be credited to the delinquent property tax administration fund. A redemption under this section shall reinstate title as provided in section 131c(4) [emphasis added].

These statutory provisions simply required, consistent with Due Process Clauses as interpreted in *Dow*, that owners of property interests be given notice and an opportunity for hearing before final termination of their interests. Significantly, § 131e neither expressly nor implicitly required *simultaneous* notices and hearings to all owners of property interests.

In *Smith*, this Court held that "[T]hese procedures meet the requirements set forth in *Dow* and thus provide a constitutionally sound procedure for sale of property because of nonpayment of taxes." *Id* at 428-429. The Court also emphasized that "[f]or due process purposes, the focus must be on the constitutional adequacy of the statutory procedure ..." *Id* at 431.

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[3] 1996 PA 476 amended § 131e(1) to require notice of hearing only to owners of a "recorded" rather than a "significant" interest in tax reverted property.

The Legislature has the authority and discretion to establish particular tax sale procedures. So long as those procedures meet minimum constitutional standards the Courts may not impose different requirements:

> The Legislature has provided a notice procedure that meets constitutional standards. The Court of Appeals decision in this case constitutes an improper intrusion into the Legislature's authority to regulate tax sale proceedings. The courts lack the authority to create new notice requirements. *Id* at 430.

Although the specific statutory language of § 131e adopted by the Legislature in 1976 PA 292 in response to *Dow* clearly satisfies due process, that particular statute is not itself a constitutional requirement or "vested right." The Legislature remains free to change that statutory language, or adopt entirely different procedures, so long as the amended or different procedures still satisfy the minimum constitutional requirements outlined in *Dow*.

The core holding of *Dow*, and the relevant requirement of the Due Process Clauses is simply that a person who owns real property is entitled to notice an opportunity to be heard and to redeem before the state finally takes away that person's title because of failure to pay taxes. 396 Mich at 210, 212. Nothing in *Dow* even remotely suggests, let alone requires *simultaneous* notices and hearings for multiple, unrelated owners of property. Under the Due Process Clauses, any individual property owner is entitled to notice and opportunity to protect his or her own rights in the property. That person's constitutional rights are not violated if the parallel rights of some third party are not afforded simultaneously.

The Due Process Clauses have never been held to require simultaneous notices, hearing and redemption periods for all owners of tax reverted property. The 1999 amendment to § 131e merely clarifies that a property owner who has been properly served with notice and fails to redeem may not rely upon lack of notice to some other property owner. Accordingly, that amendment neither violates the constitution nor impairs any vested rights.

In summary, Andiamo's reliance upon the Due Process Clauses and *Dow* is entirely misplaced. It is undisputed that Stramaglia, Defendant's predecessor-in-interest, received and ignored multiple notices and opportunities to cure his nonpayment of taxes, before termination of his redemption rights including the final notice and opportunity for hearing under § 131e. Thus, Stramaglia and his grantee Andiamo were afforded what this Court described in *Dow* as "proper notice and opportunity for hearing at which the person can contest the state's right to foreclose and cure any default determined." *Id* at 210. That is all the process they were due.

II. EVEN WITHOUT REGARD TO THE RECENT AMENDMENTS TO § 131e OF THE GENERAL PROPERTY TAX ACT IN 1999 PA 123, THE COURT OF APPEALS CLEARLY ERRED IN HOLDING THAT PERSONS WHO HAVE RECEIVED AND FOR YEARS IGNORED REDEMPTION NOTICES AND FAILED TO TIMELY REDEEM DELINQUENT TAXES ON PROPERTIES BID INTO THE STATE CAN EXTEND THE FINAL STATUTORY REDEMPTION PERIOD BECAUSE THE STATE FAILED TO SIMULTANEOUSLY NOTIFY OTHER UNRELATED PARTIES.

A. Standard Of Review

The issue presented is one of statutory interpretation, is purely legal in nature, and is, therefore, subject to *de novo* review.

B. Introduction

In the instant case, the Court of Appeals followed the decision of the *Adamo I* panel with respect to the interpretation of § 131e as it existed prior to the amendments made by 1999 PA 123. As to that narrow issue (as distinct from the issue of the effect of 1999 PA 123 discussed in § I, *supra*), the *Adamo II* panel arguably was bound by the decision in *Adamo* I pursuant to MCR 7.215(C)(2) and MCR 7.215(H)(1) as then in effect.

Nevertheless, in the event this Court does not reverse the decision in *Adamo II* for the reasons set forth in § I, *supra*, the State respectfully submits that this Court can and should reverse the decisions of the Court of Appeals in both *Adamo I* and *Adamo II* because the *Adamo I*

panel's interpretation of the pre-1999 PA 123 version of § 131c was clearly erroneous and results in manifest injustice. First, the lower courts largely ignored the language of the relevant statute, § 131e. By its terms, § 131e neither requires simultaneous notice to and a single hearing for all owners of the tax reverted property, nor prohibits the "staggered" notice and hearing procedures followed by the MDOT in this and thousands of other cases since § 131e was enacted in 1976. The courts similarly ignored the legislative history and the circumstances surrounding the enactment of § 131e in response to *Dow v State of Michigan, supra.* Further, both the circuit court and the Court of Appeals failed, without any compelling reason, to afford deference to the longstanding interpretation of § 131e by the MDOT, the agency charged with its administration.

Instead, the Courts below haphazardly and for the first time applied to § 131e what they perceived to be a "rule of law" established by this Court almost 100 years ago, in *White v Shaw.* However, the so-called "rule" of *White* was simply an interpretation of particular, but entirely different provisions of the GPTA, §§ 140-142, that govern foreclosure by private tax sale purchasers, not the State. Given the differences in text, structure and history between §§ 140-142 (private tax sale purchaser) and § 131e (properties bid into the State), *White* is not controlling here.

The Court of Appeals' unprecedented decision in *Adamo I* is not merely wrong. It is seriously harmful to the public interest. The MDOT has for more than 20 years used "staggered" notice of hearing procedures under § 131e. Thousands of tax reverted properties foreclosed under those procedures have been re-sold by the State to new owners. Now, under *Adamo I*, title to those properties has been clouded and the public interest in title repose is seriously undermined. This is so even where, as here, *all* owners of interests in the tax reverted property were each afforded constitutionally required notice and an opportunity for hearing but failed to redeem. There is no constitutional, statutory, or policy reason for such a result.

C. The Language Of § 131e Neither Requires Simultaneous Notice And Hearing, Nor Prohibits The "Staggered" Notice And Redemption Procedures Used By The State Since 1976.

The starting point for statutory interpretation is the language of the statute itself. *Sun Valley Food Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). At the time the State sent its notice of hearing and final opportunity to redeem to Andiamo's grantor, Philip Stramaglia, MCL 211.131e(1)-(3) provided:

> (1) The redemption period on property deeded to the state under section 67a shall be extended until the owners of a significant property interest in the property have been *notified of a hearing* before the department of treasury. Proof of the notice of the hearing shall be recorded with the register of deeds in the county in which the property is located.
>
> (2) The hearing shall be held to allow the owners to show cause why the tax sale and the deed to the state should be canceled for any reason specified in section 98. The hearing shall be held after the expiration of the redemption periods provided in section 131c.
>
> (3) After expiration of the redemption periods provided in section 131c, on the first Tuesday in November after title to the property vests in this state, *property may be redeemed up to 30 days following the date of hearing provided by this section* by payment of the amounts set forth in subsection (4) and in section 131c(1), plus an additional penalty of 50% of the tax on which foreclosure was made. The additional penalty shall be credited to the delinquent property tax administration fund. A redemption under this section shall reinstate title as provided in section 131c(4) [emphasis added].

By its terms, the statute simply requires that owners of significant property interests be given notice and an opportunity for a hearing before final termination of their interests. Clearly, § 131e (1) and (2), through the use of the plural "owners" provides that *all* owners of significant property interests on the parcel of land are entitled to notice, hearing and an opportunity to redeem.

Section § 131e obviously mandates *at least* one hearing, followed by a thirty day redemption period for all owners notified of the hearing. However, § 131e neither textually nor logically requires simultaneous notice to all owners and *only* one hearing and redemption period

for all owners. The statute does not specify that notice of hearing be given simultaneously for all owners. Moreover, § 131e variously refers to "the hearing," "a hearing" or simply "hearing." In summary, the text is consistent with the MDOT's interpretation, discussed in § II E, *infra* that the statute allows separate notices, hearings and redemption periods for individual property owners.

As a practical and logical matter, multiple notices and hearings are sometimes essential to satisfy the statutory and constitutional requirement of notice and hearing for all property owners. Before sending § 131e(1) notices, the State conducts a title search to identify owners of "significant" property interests in the tax reverted parcel. It then mails § 131e(1) notices to all identified owners, scheduling a show cause hearing on the same day for everyone.

Although the State sends its initial notices simultaneously, it cannot guarantee simultaneous *receipt* by all interest holders. Some owners are missed simply because their interest did not appear in the title search, either because it was not recorded, or was secured after the State conducted its title search.

Consequently, the State often learns of the existence of unnoticed owners after a show cause hearing has already been held and the subsequent 30 day redemption period has expired. In these cases the State's longstanding practice has been to send a new notice, with a new hearing date, to the newly identified owners who did not receive notice of the previous hearing. The State does not send notice of the new hearing to owners who received the previous notice and failed to redeem, since their redemption rights had already lapsed pursuant to § 131e(3). (App 28a). The new notice and hearing triggers a thirty day redemption period for the newly identified or previously unnoticed owners.

This practice of "staggered" notice and redemption is consistent with the text of § 131e. It satisfies constitutional standards of due process, *See* § II D, *infra.* It also embodies a

reasonable, longstanding interpretation of the statute by the MDOT to which the Courts should defer. *See* § II E, *infra.*

D. The Legislature Enacted § 131e To Provide Individual Property Owners With Notice Of Hearing And Opportunity To Redeem In Order To Satisfy The Minimum Requirement Of Due Process As Interpreted In *Dow v State of Michigan.* It Did Not Intend To Apply To The State The Private Tax Sale Purchaser Procedures Of §§ 140-142 As Interpreted In *White v Shaw.*

"[A] fundamental rule of statutory construction is to ascertain the purpose and intent of the Legislature in enacting a provision." *Farrington v Total Petroleum*, 442 Mich 201; 501 NW2d 76 (1993). Unfortunately, the Court of Appeals in *Adamo I* utterly failed to do so with respect to § 131e. In particular, that Court ignored unusually clear, and probative evidence of the Legislature's intent in enacting § 131e that does not support the *Adamo I* holding.

The Legislature added § 131e to the GPTA in 1976 PA 292, in direct response to this Court's decision in *Dow v State of Michigan. See Smith, supra* at 420, *Brandon Twp, supra,* 211 Mich App at 282. In *Dow*, the Court held that:

> The Due Process Clause requires that *an owner* of a significant interest in property be given proper notice and *an opportunity for a hearing at which he or she* may contest the State's claim that it may take the property for nonpayment of taxes and that newspaper publication is not constitutionally adequate notice of such rights. [396 Mich at 196(emphasis added)].

The Court explained:

> The State has no proper interest in taking *a person's* property for nonpayment of taxes without proper notice and opportunity for a hearing at which *the person* can contest the State's right to foreclose and cure any default determined. *Id* at 210 (emphasis added).

Thus, the focus of the Court's Due Process analysis was upon statutory procedures that would adequately protect the individual rights of each property owner. The Court concluded:

> ...[I]t would satisfy constitutional requirements if the State were to adopt a procedure providing for ...(iii) after sale to the state, formal *notice to all owners of significant property interests of* the constitutionally required *opportunity for hearing and redemption. Id* at 212 (emphasis added).

Confronted by *Dow*, the Legislature did not simply adopt for tax reverted properties bid into the State, the private tax sale procedures under §§ 140-142 (which as the Court noted, already provided for notice by mail rather than publication) that were construed in *White v Shaw*. Instead, the Legislature enacted an entirely new, and separate procedure § 131e that was obviously based directly on the language in *Dow* last quoted above.

Clearly, the Legislature intended § 131e to satisfy the minimum requirements of due process for individual property owners as determined in *Dow*, no more, no less. Those constitutional requirements do not include simultaneous notice hearing and redemption periods for other, unrelated property interest owners like those erroneously applied in *Adamo I*.

E. The Court Of Appeals In *Adamo I* Unjustifiably Failed To Consider And Defer To The MDOT's Long-Standing Interpretation Of § 131e As Allowing Staggered Notice, Hearing And Redemption Periods.

The Court of Appeals' interpretation of the pre-1999 PA 123 form of § 131e in *Adamo I* is contrary to the MDOT's well-established construction of that provision. While an agency's interpretation of statutes it administers are not binding on courts, long-standing administrative interpretations are entitled to great weight unless clearly wrong. *See, e.g., Ludington Service Corp* v *Insurance Commissioner*, 444 Mich 481, 491; 511 NW2d 661 (1994); *Southfield Police Officers Ass'n v City of Southfield*, 433 Mich 168, 176-177; 445 NW2d 98 (1989); *Faircloth v Family Independence Agency*, 232 Mich App 391, 406 ;591 NW2d 314 (1998).

Here, the interpretation and application of the laws and regulations governing tax-reverted properties, which include § 131e, are the responsibility of the Local Property Services Division of the MDOT. The lower court record includes the October 9, 1997 (App 24a-29a) and June 11, 1998 (App 75a-77a) affidavits of Thomas Willard, Manager of the Local Property Services Division for some 15 years. As evidenced by those affidavits, the MDOT has

consistently interpreted § 131e to require notice, opportunity for hearing and redemption for individual property owners to the extent mandated by this Court's application of the Due Process Clauses in *Dow*. Indeed, the MDOT refers to the show cause hearings conducted pursuant to § 131e(1) and (2) as "Dow" hearings.

It is undisputed that MDOT notified Andiamo's grantor, Philip Stramaglia, by certified mail on April 5, 1994, that a show cause hearing under § 131e would be held on April 12, 1994 regarding foreclosure of the Harper site by the State due to nonpayment of 1988 taxes and that Mr. Stramaglia failed to appear at the April 12 hearing or to redeem within 30 days after that hearing. (App 26a-27a; 42a-43a). The MDOT therefore, deemed Mr. Stramaglia's final redemption period under 131e (3) to have expired in May, 1994. (App 28a). Consequently, the MDOT did not send a § 131e notice to Andiamo, Inc. because its quitclaim deed from Mr. Philip Stramaglia was dated May 22, 1995, over a year after Stramaglia's redeemable interest had expired. (*Id*).

After the action was begun below and Defendants claimed that other owners with interests in the Harper property had not been accorded § 131e notice in 1994, the State Treasurer proceeded in 1997 to serve notices for a second § 131e hearing for the property. (App 27a, 30a-41a). Consistent with its long-standing practice and application of § 131e, the Local Property Services Division did not renotice anyone who had been previously served with a § 131e notice, been afforded an opportunity for a hearing, and had failed to redeem the property within the 30 days thereafter. (App 28a).

Clearly, it has long been the practice of the MDOT, as is consistent with due process, to accord anyone demonstrating a potential interest in a tax-reverted property deeded to the State the notice, hearing and opportunity to redeem mandated by § 131e. But it is also clear that the MDOT has only seen its obligation under § 131e to require that each such owner of a potential

interest be given only one such hearing and opportunity to redeem. Under MDOT's established interpretation of § 131e, redemption rights are individual. Once an individual property interest owner is afforded notice and hearing under § 131e but fails to redeem within 30 days of the hearing that owner's interest is terminated.

As noted above, it was only after the initial notices here, that an amendment to § 131e pursuant to 1996 PA 476 finally made explicit that only *recorded* interests rather than "significant" interests in property are entitled to § 131e notice. Previously, the MDOT had no way of knowing whether, in addition to those recorded interests which it should be able to identify by a title search, unrecorded quitclaim deeds, mortgages or liens existed whose holders would also be entitled to § 131e notice. Thus, when such unrecorded interest holders were discovered after the initial § 131e notice and hearing, it was the agency's practice to afford a hearing and opportunity to redeem to only the newly-identified interest holder, without renoticing every other previously-notified owner. This staggered notice, hearing and redemption procedure afforded every owner due process yet represented a reasonable, cost-effective administration of the statute.

Accordingly, this Court should give deference to the long-standing interpretation of §131e by the MDOT which has been responsible for administering it during the decades of its existence and reverse the lower courts' unwarranted interpretation of that statute as requiring simultaneous notice, hearing and redemption for all interest owners.

F. The Lower Courts Mistakenly Focused On The So-Called "Rule" Of *White v Shaw* Rather Than § 131e Itself.

Instead of beginning their analysis of § 131e with the text of the statute itself, the relevant history as evidenced in *Dow*, and the MDOT's established interpretation of that provision, the

circuit court and Court of Appeals were misled by Defendants into focusing on a purported "rule of law" established in *White v Shaw, supra*. The circuit court stated:

> Defendants principally rely on the case of *White v Shaw*, 150 Mich 270 (1907) and its progeny to support their position. In *White, supra*, 273, 274, the Court stated *the following rule of law* and held: "the tax title holder cannot proceed by 'piecemeal' to cut off the right of redemption of each part owner. Until he has complied with the statute as to *all*, the right of redemption remains to *all* . . . Then it must be that the tax title holder is not entitled to go into possession until . . .notice has been served upon all grantees or owners; and until this has been done, any one of them may redeem." (59a, emphasis added).
>
> * * *
>
> After all, *the established law in this state*, at least before the amendments to section 73a and their construction by the court in *Halabu*, was that *redemption rights* could not be cut off piecemeal. See cases collected in Anno: *Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party*, 45 ALR4th 448, 463. While these may have been decided under the provisions of the statute relating to notice and redemption rights under section 140, *there is nothing in section 131e to which the State or City calls this court's attention that would serve to remove it from the rule formerly held applicable to section 140 redemption rights*. (62a-63a, emphasis added).

Thus, the circuit court apparently perceived *White v Shaw* as establishing a "rule of law" generally applicable to all redemption rights under the GPTA, and that was presumed to apply to § 131e absent specific language to the contrary.

The Court of Appeals in *Adamo I* similarly hinged its analysis on "the rule of *White*." 234 Mich App at 241. While it acknowledged that *White* interpreted § 140 rather than § 131e, and that there are procedural differences in those statutes, it nonetheless proceeded from a presumption that the holding in *White* applied here:

> We fail to see why this distinction would prevent us from applying *White* to cases in which property is bid off to the State. Both sections require notice of the right of redemption to all owners.
>
> * * *
>
> We hold the trial court properly applied the *rule of White* to this case. *Id* at 241-243(emphasis added).

The *Adamo, II* panel likewise referred to "the rule against piecemeal extinguishing of redemption rights articulated in *White v Shaw* . . . ." (83 a) and " the rule of *White*." (84 a).

In short, each of the lower courts made the same fundamental error. They worked backwards. Rather than analyzing § 131e from the perspective of its own new text and apparent legislative purpose, they took a decision (*White*) construing an entirely different statute (§§ 140-142), mischaracterized it as a general "rule of law" and wrongly presumed that it should apply to § 131e.

1. *White v Shaw* and its progeny did not and could not establish a "rule of law" generally applicable to all statutory procedures for foreclosing tax liens.

The central fallacy of Defendants' argument and the lower courts' holdings is that in *White v Shaw* and subsequent cases, this Court somehow established a "rule of law" that generally applies to all property tax redemption procedures, independent of the particular statutory language construed in *White*. Careful examination of this Court's decision in *White* shows that it did not.

In *White*, three individuals each owned an undivided one third interest in tax delinquent property. A private tax sale purchaser served notice of the right of redemption under § 140 of the GPTA upon only two of the three interest holders, both of whom failed to redeem in this six months after receipt of notice. The question presented was whether the failure to serve notice upon the third owner extend the redemption period for the two other owners who did receive notice. 150 Mich at 272. This Court held that it did.

The *White* holding however, was simply this Court's construction of the particular statutory provisions then governing foreclosure by private tax lien purchasers, §§ 140-142 of the GPTA. The Court stated:

> The assessment, payment, and redemption are all regulated by the statute, and *if we can correctly construe and interpret the statute, we have solved the problem.* It seems very clear that the tax-title purchaser cannot go into possession until he has served the notice on all of the grantees under the last recorded deed, and that until he has thus complied with the statute the right of redemption remains to all of such grantees; and this is rendered very clear by a *reference to section 141.*
>
> * * *
>
> In *Pike v Richardson*, 136 Mich. 414, 99 N. W. 398, it was held that *sections 140 and 141 should be construed together*, the period allowed for redemption being coterminous with the period during which the holder of the tax title may take action, so that the personal service referred to in section 141 contemplates a service completed by filing a return. The tax-title holder cannot proceed by 'piecemeal' to cut off the right of redemption of each part owner. Until he has complied with the statute as to all, the right of redemption remains to all. It seems to me that *this is the reasonable construction that is given to these statutes.*
>
> * * *
>
> Would the defendant Shaw be entitled to a writ of possession as to these lands by showing six months' service on White and Jopling only? Clearly not. *See language of section 142.* Then it must be that the tax-title holder is not entitled to go into possession until six months' notice has been served upon all grantees or owners; and until this has been done any one of them may redeem. Id 150 Mich at 272-274 (emphasis added).

The fact *White* and subsequent cases following its construction of § 140-142 are collected in the annotation cited by Defendant and the circuit court [4] and characterized therein as a "rule" does not, of course make it one for § 131e. The *White* decision is simply a case construing a specific statute different from that involved here.

Moreover, *White* could not, as a legal matter, be anything other than an interpretation of the particular statute at issue §§ 140-142. As this Court recently emphasized in *Smith, supra*, only the Legislature, not the Courts, has authority to regulate tax sale proceedings. So long as a particular tax redemption statute meets applicable constitutional standards, "the courts lack the authority to create new notice requirements." 463 Mich at 430.

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[4] Anno: *Right of interested party receiving due notice of tax sale or right to redeem to assert failure or insufficiency of notice to other interested party*, 45 ALR 4th 447, 463.

2. Given the differences in text, structure and history between the private tax lien foreclosure procedures of §§ 140-142 construed in *White v Shaw* and those of the state foreclosure procedures under § 131 e, *White v Shaw* is not controlling here.

The statutory provisions for tax lien foreclosures for property bid off to the State and for private tax sale purchasers have always been separate and distinct under the GPTA. The provisions of § 140-142 construed in *White* have never, by their terms, applied to the State. *See, e.g. Dow, supra* 396 Mich at 197; *Flint v Takacs, supra*, 181 Mich App at 736-738.

As discussed above, § 131e was an entirely new procedure, applicable solely to the State, enacted in 1976 in response to *Dow*. It provides for a notice, opportunity for hearing and a third redemption period intended to satisfy the minimum requirements of due process for individual property owners as interpreted in *Dow*. Those procedures were set forth in three relatively short and general paragraphs in § 131e (1)-(3) quoted above. The third and final redemption period of 30 days is triggered by the date of "hearing" afforded to a property owner.

The private tax sale purchaser foreclosure process under § 140-142 is entirely separate and materially different from § 131e. Sections 140-142 contain far more detailed and prescriptive notice requirements. Most significantly, § 140 contemplates a single six month final redemption period, that is triggered by the County Sheriff filing a notice that all persons listed in § 140 have been served with notice of their right to redeem.

By contrast, as discussed above, the final redemption period under § 131e is triggered by the date of a show cause hearing. The Court of Appeals in *Adamo I* blithely and erroneously dismissed this key distinction as follows:

> We fail to see why this distinction would prevent us from applying *White to cases in which the property is bid off to the state. Both sections require notice* of the right of redemption to all owners. Contrary to plaintiff's protests, there need not be multiple show cause hearings to accommodate various owners and, therefore, multiple redemption periods. We do not think it would be so difficult

> to schedule a hearing to accommodate all interested owners once they have all been notified. [234 Mich App at 242]

That "analysis" is wrong in several respects. First, the mere fact that both § 140 and § 131e require notice to all owners misses the point. As interpreted in *White*, the text and structure of §§ 140-142 require that a single event, i.e. the Sheriff's return of service showing completion of service on all owners, triggers a single final redemption period. However, § 131e is critically different. Neither the text nor the underlying constitutional purpose of § 131e requires simultaneous notice and a single hearing date, triggering a single redemption period. Section 131e allows separate, or staggered notices and hearings for individual property owners.

Second, neither the State nor the City ever argued in the courts below that § 131e legally *requires* multiple show cause hearings and redemption periods. The point is simply that § 131e permits them, and that they are, as a practical matter, sometimes necessary. As explained above, the MDOT conducts title searches and does simultaneously mail notices of an initial § 131e hearing to all identical interest holders. However, those efforts cannot necessarily assure a single hearing for various reasons. The title searches may not disclose all interests. Simultaneous mailing of notices does not guarantee simultaneous receipt of the notices. More important, unrecorded or later recorded but arguably "significant" interests sometimes come to light after the final notice and hearing, thus requiring further notice(s) and hearing(s).

Third, whether the *Adamo I* panel " [does] not think it would be so difficult to schedule [a single] hearing," *Id.* is not, of course, the relevant question. The issue is whether either the Constitution or the Legislature in § 131e itself clearly required a single, simultaneous hearing for all interest holders and a single redemption period. Because, as shown above, they did not, it was error and a usurpation of legislative authority for the Court of Appeals to impose those requirements, regardless of the level of difficulty the Court perceived them to entail.

Thus, here, as in *Smith, supra*, "[t]he Court of Appeals improperly imposed notice requirements beyond those required by the Legislature." 463 Mich at 431. Accordingly, even without regard to the amendments to § 131e in 1999 PA 123, the decisions of the Court of Appeals in *Adamo I* and *Adamo II* should be reversed.

CONCLUSION

The Court of Appeals' refusal to apply the directly controlling statute, § 131e of the GPTA, as amended by 1999 PA 123, in the pending appeal is wholly unjustified and manifest error. Its conclusion that the statute violates the separation of powers doctrine of the Michigan Constitution rests upon a highly selective and fundamentally mistaken reading of the very authorities it cites. Where, as here, the Legislature expressly makes a statutory amendment retroactive, an appellate court must apply that law in reviewing judgments still on appeal, including judgments rendered before the law was enacted. Because the Court of Appeals has inexplicably failed to perform its duty to apply the controlling law, it falls upon this Court to do so.

RELIEF

For those reasons, and the other reasons more fully stated above, the State requests that this Court:

A. Reverse the judgments of the Court of Appeals and circuit court or, in the alternative;

B. Enter judgment in favor of the State pursuant to MCR 7.316(A)(7); and

C. Grant the State such further or different relief as the Court finds appropriate and just pursuant to MCR 7.316(A).

Respectfully submitted,

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